Saz Metals Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-12-1999

Reported in : (2000)LC242Tri(Mum.)bai

Appellant : Saz Metals

Respondent : Commissioner of Central Excise

Judgement :

1. The question for consideration in this appeal is the classification of copper castings manufactured by the appellant. The appellant had sought their classification under Heading 7419.91. This heading is for "Other articles of copper cast, moulded, stamped or forged but not further worked." In the order impugned in the appeal, the Collector has held that these castings after being cast were further worked and hence were classifiable under Heading 7419.99, a residuary heading in chapter 7419 for other articles.

2. It is the contention of the appellant that after the materials are cast, they are subjected to what is referred to as "proof machining".

This, he says, is an operation that is intended to remove excess material on the surface, so as to locate the presence of surface defects. Such proof machining, he says, does not amount to further working of the casting. He cites the Explanatory Notes to the Harmonized System of Nomenclature to Headings 7320.11 to 7419.91 in which certain operations to which castings or forgings of iron and steel may be subjected to are specified. These Explanatory Notes is made applicable to products of copper. He further relies upon the decision of the Tribunal in Shivaji Works Ltd. v. CCE 3. The Departmental Representative relies upon the reasoning in the Collector's order.

4. The Collector accepts that the goods are subjected to the process of fettling and cutting and grinding in order to remove runners and risers and then proof machined to locate surface defects. He is of the view that the Explanatory Notes to Harmonised System of Nomenclature (HSN) may apply to forged or stamped product but not to cast or mould articles. He therefore comes to the conclusion that proof machining to which the goods are subjected amounts to further working. Such further worked articles, according to him, are classifiable under the residuary Heading 7419.99.7419.10 - Chain and parts thereof 15% - Other :7419.91 - Cast, moulded, stamped or forged, but 15% not further worked It is worded identical to the entry 7419 in the HSN and reference to this note is therefore justifiable. Explanatory Notes to sub-headings 7326.11 and 7326.19 have this to say :"7326.11 Grinding balls and similar articles for mills7326.19 Other" Explanatory Note 7419.91 says that the Explanatory Note to sub-headings 7326.11 and 7326.19 applies, mutatis mutandis, to the products of this sub-heading. In the case of cast or moulded products, the sprues and feeder heads may be removed.

5. It is clear from these notes that the specified processes apply to goods of sub-heading of Explanatory Notes 7326.11 and 7326.19, while they may perhaps be limited in the case of iron and steel to those which are forged or stamped, by virtue of Explanatory Note to Heading 7419.91 apply to cast, moulded, stamped or forged items of copper worked. This would settle the issue.

6. Apart from this, it is difficult to comprehend the Commissioner's distinction between proof machining and the process that the appellant's goods have been subjected to. Any cast articles has after casting to be further shaped by removal of excess material and ground or otherwise worked to the tolerance required. The initial processes in such cases are limited to removal of excess material. These are the processes that the notice to show cause and the Collector's order refer to such as fettling etc. The Tribunal decision in Pefco Foundry & Chemicals Ltd. v. C.C.E., 1985 (19) E.L.T. 103 has dealt with these processes. The order of Shri

K.L. Rekhi, Member (Technical) explains that "proof machining is done in order to see that the wall of casting (of cylinder liners) are not hollow from inside. It also removes surface defects of the casting and makes the casting a smooth and clean one. At this stage, the process of converting the casting into a machinery component has really not commenced." If that is the case, the processes that the goods was subjected to are not other than those mentioned in the sub-heading to Explanatory Note 7326.11 which is applicable to sub-heading 7419.91.

7. The Collector has classified the goods under Heading 7419.99. It is difficult for us to concede of a cast product not classifiable under Heading 7419.91 not being classifiable under the relevant chapters of the tariff as an identifiable article or component of a machine. If the product has not been worked after casting, moulding, stamping etc., it would continue to remain in Heading 74.19. If it would had been so further worked as to have the essential characteristic of a machinery part, it would, by virtue of Note 2 (a) to the Interpretative Rules to the tariff to be classifiable as such a machinery part or other such finished article. It does not appear to us that the tariff in its structure contemplates the existence of goods at various stages between what emerges after casting and or forging and classification of the finished article of finished product from machinery parts. Whether any of these intermediary processes, the sum total of which may result in converting the product into casting or moulding to a finished product would by itself constitute a manufacture is also doubtful. However, further discussion is not really required on this issue, since for the reason indicated earlier, even without going into this aspect, it has to be held that the goods have to be classifiable under sub-heading 7419.91. 8. Appeal allowed. Impugned order set aside.